IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4640 OF 2005

Kavita Keshav Khanvilkar. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Shri Vilas Shivarkar for the Applicant.

Ms.M.H.Mhatre, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 11th August, 2005.

P.C.:

1. Heard the learned Counsel for the Applicant and the learned A.P.P. for the State.

2. The Applicant is an accused who has been convicted by the learned Magistrate for offence punishable under section 260, 467, 468, 471, 420 r/w. 34 of the Indian Penal Code. The learned Magistrate also directed the Applicant to deposit Rs.3 lakhs as compensation under the provisions of section 357(3) of the Code of Criminal Procedure, 1973. An appeal preferred by the Applicant against the order of conviction and sentence has been admitted. The order impugned has been passed on a bail application made by the Applicant in the pending Appeal before the Sessions Court. By the impugned order, the learned Addl.Sessions Judge suspended the operation of the substantive sentence and directed the Applicant to deposit a sum of Rs.1,25,000/- on or before 15th June

2005. The bail was granted for a limited period till 15th June 2005 on executing P.R.Bond for Rs.25,000/- with two sureties in the like amount.

3. On July 20, 2005 the learned Advocate for the Applicant made a statement that the Applicant will deposit a sum of Rs.25,000/- within a period of two weeks. The office noting shows that though the amount is not deposited within the period of two weeks, but on 10th August 2005 the amount has been deposited in this Court.

4. The learned Advocate for the Applicant submitted that the Advocate appointed by the Applicant during the pendency of the trial obtained discharge and the Applicant was thereafter never made aware of her right to engage services of another Advocate and even legal aid was not made available to the Applicant. He pointed out that the Applicant herself has cross-examined all the prosecution witnesses. He submitted that it is impossible for the Applicant to deposit the sum of Rs.1,25,000/- as directed by the Sessions Court.

5. The learned A.P.P.opposed the application by submitting that instead of directing deposit of the entire compensation amount, the Applicant has been directed to deposit only a sum of Rs.1,25,000/-. Considering the findings recorded by the learned

Metropolitan Magistrate, the learned Addl.Sessions Judge was justified in directing the deposit.

6. I have considered the submissions. Prima facie there is some substance in the contention of the learned Advocate for the Applicant that the Applicant had no opportunity to defend herself properly in the trial. The Applicant has deposited a sum of Rs.25,000/- in this Court. The learned Advocate for the Applicant stated that he is not challenging the last part of the order of the learned Addl.Sessions Judge by which he was ordered to be enlarged on bail on executing P.R. bond of Rs.25,000/- with two sureties of like amount. In fact he stated that the bail bonds have been furnished.

7. The substantive Appeal preferred by the Applicant for challenging the conviction and sentence has been admitted. Considering the facts of the case, it will be unjust to direct the Applicant to deposit a sum of Rs.1,25,000/-. In my view the impugned order passed by the learned Addl.Sessions Judge needs to be modified. Hence the Application is disposed of by the following order:

(i) The Applicant is directed to deposit a sum of Rs.25,000/- out of the compensation amount of Rs.3,00,000/-. The deposit of Rs.25,000/- made by the Applicant in this

Court on 10th August 2005 will be treated as compliance with the said direction. The amount deposited in this Court will be transmitted to the Sessions Court, Mumbai, and the concerned Court will pass appropriate order of investment/ disbursement of the said amount.

(ii) Till final disposal of the Appeal No.159 of 2005 the Applicant shall be enlarged on bail on executing P.R.Bond of Rs.25,000/- with two sureties in the like amount. If the Applicant has already furnished the bail bond in compliance with the impugned order, time of two weeks is granted to the Applicant to furnish fresh bail bonds.

(iii) It is made clear that all questions on merits in the pending Appeal is expressly kept open.

(iv) The parties and the concerned Court to act on ordinary copy of this order.

Judge.